

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1716

SPONSOR: Senator Gutman

SUBJECT: Auctioneering

DATE: March 11, 1999

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Martin</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill amends Part VI, Chapter 468, Florida Statutes, dealing with auctioneer regulation. It would allow examination of applicants through a written examination approved by the Florida Board of Auctioneers, and updated subjects for the examination are provided. It would delete the limited exception to the requirement in existing law that all auctions in this state shall be conducted only after a written agreement is executed with the owner. Finally, the bill would substantially alter the operation and applicability of the Auctioneer Recovery Fund, by eliminating court involvement and conditioning any recovery upon issuance of an administrative final order that restitution be made. Recoveries would be restricted to actual losses resulting from a practice act violation in the state. No claim can be made for acts or omissions occurring before October 1, 1991, and, if the fund makes payment on a claim, then it is subrogated to all rights of the claimant against the licensee.

This bill substantially amends the following sections of the Florida Statutes: 468.385, 468.388, 468.389, and 468.395.

II. Present Situation:

Under current law, an applicant must take a written examination prepared and administered by the board. The examination must test the applicant's general knowledge of the laws of this state relating to bulk sales, auctions, brokerage, and the practice act. *See*, s. 468.385(4), F.S.

Prior to conducting an auction, an auctioneer must execute a written agreement with the owner of the property to be offered for sale, unless the auction is to be conducted at an auction house, there has been no prior negotiation between the owner and the auctioneer involving the terms or conditions pertaining to the property to be offered for sale, and the total estimated value of the property is \$500 or less. *See*, ss. 468.388(1) and 468.388(3), F.S.

An auctioneer can be subject to discipline for failure to account for, or pay, money belonging to another which has come into the auctioneer's control through an auction, within a reasonable period of time not to exceed 30 days. *See*, s. 468.389(1)(c), F.S.

Under existing law, an aggrieved person must obtain a final judgment in any court recovering damages against a licensee and, upon termination of all proceedings, file an application in the court for an order directing payment out of the Auctioneer Recovery Fund of the amount of actual and direct loss in the transaction with the licensee that remains unpaid upon the judgment. The amount of loss may include court costs, but not attorney's fees nor any punitive damages awarded. The amount paid by the fund may not exceed \$50,000 per transaction or auction, and there is an aggregate lifetime limit of \$100,000 with respect to any one licensee. *See*, s. 468.395(1), F.S.

Such aggrieved person must provide notice to the board upon commencing an action against a licensee and must make a claim against the fund within 2 years after the time of the act giving rise to the claim. The claimant is further required to reasonably establish for the court that the claimant has taken all proper and reasonable action to collect the amount of the claim from the licensee responsible for the loss. *See*, s. 468.395 (2)-(4), F.S.

III. Effect of Proposed Changes:

This bill amends Part VI, Chapter 468, Auctioneers, in many respects. **Section 1** amends s. 468.385, F.S., to provide that license examinations be approved by the Florida Board of Auctioneers, deleting the requirement that such examinations be prepared and administered by the Department of Business and Professional Regulation. It also modifies the scope of the examination to require the applicant to demonstrate general knowledge of the laws of the state relating to provisions of the Uniform Commercial Code relevant to auctions, the laws of agency and the provisions of the practice act.

Section 2 amends s. 468.388, F.S., by removing a limited exception to the existing requirement that all agreements between an owner of property and a licensee shall be written agreements executed prior to the auction be conducted. In connection with this change, the bill removes conditions from the requirement that a licensee maintain a record book of all sales.

Section 3 adds to the list of prohibited activities in s. 468.389, F.S., failure to account for property within a reasonable time, not to exceed 30 days, belonging to another which comes into the control of the licensee through an auction.

Section 4 of the act thoroughly rewrites the existing provisions dealing with the Auctioneer Recovery Fund, s. 468.395, F.S. The existing procedure of petitioning the court after obtaining a final judgment against a licensee for an order directing payment out of the fund is deleted. Instead, a claimant would deal directly with the board by submitting an application for payment. A claimant can only submit an application for payment from the fund if the board issues a final order directing an offending licensee to pay restitution to the claimant and the board determines that the order of restitution cannot be enforced, or if the claimant obtains a final judgment against the licensee and amounts remain unpaid upon that judgment. In either case, an actual loss suffered by the claimant has to have resulted from the violation by the licensee within this state of any

provision of s. 468.389, F.S., or any rule adopted by the board. The bill deletes the current notice to the board requirements at the time an action is commenced and it amends the fund limits to \$50,000 per claim or claims, instead of judgments. It would also establish that no claim against the fund would be payable based upon any act or omission that occurred outside this state or that occurred before October 1, 1991.

Finally, the bill provides that the rights of the claimant against any licensee are subrogated to the fund to the extent of the amount of payment to the claimant by the fund.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be some minor impact on claimants whose claims are based upon acts or omissions that occurred before October 1, 1991. The remainder of the changes to the conditions of recovery from the Auctioneer Recovery Fund should expedite the process, especially removing it from the court system and placing it fully in the hands of the Board of Auctioneers. Claims for recovery from the fund could flow naturally from a disciplinary proceeding against a licensee and would not require the time and additional expense of a court proceeding after the disciplinary process concludes.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
